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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

In re K.F., a Person Coming Under the Juvenile
Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

CHRISTOPHER L.,

Defendant and Appellant.

F077085

(Super. Ct. No. 14CEJ300206-1)

OPINION

APPEAL from orders of the Superior Court of Fresno County. Leanne Le Mon,
Commissioner.

Carol A. Koenig, under appointment by the Court of Appeal, for Defendant and
Appellant.

Daniel C. Cederborg, County Counsel, and Brent C. Woodward, Deputy County
Counsel, for Plaintiff and Respondent.

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Christopher L. appeals from the juvenile court's orders denying his request for presumed father status with respect to his girlfriend's daughter, K.F. (daughter), who is not his biological child. Christopher argues he qualifies as a presumed father under Family Code section 7611, subdivision (d)¹, and a third parent under section 7612, subdivision (c). We affirm.

STATEMENT OF FACTS AND PROCEDURE

Previous Dependency

Daughter was born in May of 2013 to Katie F. (mother) and presumed father Nicholas M. In June of 2014, daughter was removed from mother's custody due to general neglect issues regarding substance abuse and an inappropriate care plan, as mother was leaving daughter with maternal great-grandmother, who was 80 years old and in failing health. Daughter was adjudged a dependent and mother and Nicholas provided family reunification services. Nicholas did not complete services; mother complied with the plan, dependency was dismissed, and mother was granted sole legal and physical custody of daughter on June 6, 2016. Four months earlier, in February 2016, mother had another child, K.F. (son).² Christopher is son's presumed father.

Current Dependency

On September 7, 2017, a protective hold was placed on then four-year-old daughter and 18-month-old son³ when mother was found to be on drugs and unable to care for the children. Mother would disappear for long periods of time, leaving the

¹ All further statutory references are to the Family Code unless otherwise stated.

² Because the siblings possess the same initials as mother and each other, for clarification, we will refer to them as daughter and son throughout this opinion.

³ Son is not a child at issue in this appeal; mother and Nicholas are not parties to this appeal.

children with maternal great-grandmother, who was in her 80's and in failing health.⁴ Great-grandmother's home was unsafe for the children, strewn with junk and rotting food, due to great-grandmother's hoarding tendencies. According to mother, she had been clean and sober for two years prior to December 2016, when she had a mental breakdown and relapsed after finding her own mother dead in the bathtub. Daughter reported that she rarely saw mother, and it was great-grandmother, a great-aunt and aunt who cared for her and brought her food.

The Fresno County Department of Social Services (department) filed a Welfare and Institutions Code section 300 petition on September 11, 2017, alleging mother had a methamphetamine substance abuse problem, putting the children at risk of harm. At the time of the report, Christopher was incarcerated for violating a protective order and violating the terms of his probation. He stated he wished to provide for both children upon his release, and that daughter "knows me as her dad." The social worker did not recommend Christopher have visits with daughter, but be given a minimum of two visits per week with son.

At the detention hearing on September 12, 2017, Christopher requested he be elevated to presumed father status for daughter. Mother was in agreement with this request. The children were detained and placed together with daughter's former care providers, who had cared for her during the previous dependency. No visits were ordered between Christopher and daughter. Visits between Christopher and son were ordered upon Christopher's release from custody. Jurisdiction/disposition was set for October 17, 2017.

⁴ At times, mother would leave son with his paternal grandmother, Christopher's mother, who had been advised to get legal guardianship of him, but had not completed the process.

Request for Presumed Father Status

On September 14, 2017, Christopher filed a Statement Regarding Parentage (JV-505), seeking presumed father status for daughter. Christopher alleged that daughter had lived with him from 2015 to 2017, he had told family members and friends he was daughter's parent, and he had participated in family gatherings, birthdays, shopping and bedtime stories with her, had given her birthday and Christmas gifts, and spent holidays, birthdays, weekend gatherings, and family shopping trips with her. He stated he had raised daughter since "she was one year old," she referred to him as her father, he held her out as his own child, and he had provided support for her and intended to continue doing so.

Jurisdiction/Disposition

The report prepared for jurisdiction/disposition stated that Nicholas was not listed on daughter's birth certificate, but he was elevated to presumed father status and provided reunification services in the previous dependency case. Nicholas did not complete the services, which were then terminated. When the previous dependency was dismissed, mother was granted sole legal and physical custody of daughter. Mother reported that daughter sees Christopher as her father and requested he be able to visit her. Mother claimed that she made up the story of Christopher harming her, an allegation that led to the emergency protective order that Christopher violated and was arrested for. Mother wished to remain in her relationship with Christopher.

Nicholas reported to the social worker that he considered himself the biological father of daughter and opposed Christopher being deemed her presumed father.

At the jurisdiction/disposition hearing on October 17, 2017, the juvenile court found the allegations of the petition true and removed the children from mother's custody. No reunification services were ordered for mother due to her continued substance abuse. No services were ordered for Nicholas. Reunification services for

Christopher as to son only were ordered, including parenting classes, domestic violence assessment and recommended treatment, substance abuse assessment and recommended treatment, a mental health evaluation and recommended treatment, and random drug testing.

The juvenile court granted the agency's request for a continuance on the issue of Christopher's presumed father status, but noted it was not inclined to grant the motion because, although Christopher had stated he had been involved in daughter's life since she was one year old, he was not mentioned or involved in the prior dependency case involving daughter. No visitation was ordered between Christopher and daughter.

A Welfare and Institutions Code section 366.26 permanency hearing was set for daughter for January 23, 2018, and a six-month review hearing for son in April of 2018. A post-disposition mediation was set for December 5, 2017, and the juvenile court set the statement regarding parentage for the same date, "so everybody has a chance to review it."

Mediation Agreement

On December 5, 2017, a mediation agreement was filed, indicating Christopher was in custody from July 13, 2017, to November 21, 2017, at which time a criminal protective restraining order was issued, prohibiting Christopher from having contact with mother until October 23, 2020. While in custody, Christopher had two visits with son. At the hearing on the mediation, Christopher's counsel made an oral amendment to Christopher's statement regarding parentage, stating he had raised daughter from the time she was 23 months old, not one year old, as previously claimed. The issue of presumed father status was set for a contested hearing on February 13, 2018.

Welfare and Institutions Code Section 366.26 Hearing Report

The report prepared in anticipation of the section 366.26 hearing set for daughter now listed Nicholas as an alleged father, but also reported that he was elevated to her

biological father on September 3, 2014, following DNA testing. Although visits were ordered for Nicholas, he failed to follow through. During a visit with mother, daughter stated she missed daddy, and when asked by mother who she meant, daughter said “Chris,” meaning Christopher. The social worker reported that daughter saw Christopher in the lobby at the end of a visit, called him “Chris” and gave him a hug and a kiss. The social worker reported that daughter had been in the care of foster parents from June 18, 2014, to May 8, 2015, during the first dependency, and then again since September 7, 2017. The foster parents remained in touch with daughter and mother and provided childcare even after the previous dependency case closed. The social worker noted the foster parents wished to adopt daughter, she had developed a bond and attachment to them, and recommended parental rights for mother, Nicholas, and “all persons claiming to be the father,” be terminated.

Welfare and Institutions Code Section 366.26 and Presumed Father Status Hearing

The Welfare and Institutions Code section 366.26 hearing was subsequently continued to February 13, 2018, and combined with Christopher’s request for presumed father status. At the outset of the hearing addressing the issue of presumed father status, the parties stipulated to several documents, including daughter’s birth certificate, which lists no father, and an order of the juvenile court dated March 7, 2016, which lists mother’s “fiancé, friend” as being present at court.

Christopher testified that he met daughter on March 6, 2015, and began living with her two months later, in May of 2015. Daughter was about two years old at the time. Christopher was aware that there was a dependency case involving daughter going on at the time, but he was not involved, except for attending one hearing. Christopher testified that, during the previous dependency case, he was staying at his mother’s home with mother and daughter, and had gone through an approval process with the agency to do so. He also stayed with mother and daughter at daughter’s great-grandmother’s home.

Between May 2015, and June 2016, when the dependency case closed, Christopher was in and out of the home, as he and mother had their “differences.” He testified that he provided groceries, clothing, and sometimes helped with rent. Christopher maintained that, even when he and mother were apart, he still shared time with daughter.

Christopher testified he had known daughter for approximately three years and had lived with her at various places. Christopher claimed to have provided for daughter by working various labor jobs and at the telephone company. According to Christopher, he played with daughter, read to her, took her to the playground, to the zoo, swimming, and to family holiday gatherings. He said they had a good bond and she always wanted to go with him to do anything. Christopher felt like he was daughter’s father and held her out as his daughter; she called him “dad,” “daddy,” or sometimes “Chris.” When Christopher last saw daughter the previous month, she greeted him by saying, “Hi, Daddy.” Various photographs of daughter and Christopher from March 6, 2015, to the present were introduced as exhibits.

Christopher testified he was incarcerated from June 2016 to October 2016, and again from February 2017 to June 2017. In July 2017, he was arrested for a domestic dispute with mother and incarcerated until November 2017. He requested not to see daughter while he was in custody.

Christopher testified he was participating in reunification services for son and wanted daughter to be a part of that as well. Christopher stated he would do whatever was necessary to care for both children, and he wished to marry mother and be a family. He was willing to support daughter financially and protect her from her biological family, if necessary. Christopher conceded that he had not attempted to attain presumed father status earlier, but did not know what the process was to do so. He also conceded that he never attempted to adopt daughter. Christopher met Nicholas once, during the previous dependency case.

Mother testified that she introduced daughter to Christopher in March of 2015, a couple of months after she met Christopher, and that daughter liked him right away. Mother, Christopher and daughter celebrated Easter together and had a birthday party for daughter at Christopher's mother's home. While mother was on family maintenance services in the previous case, she was living with daughter at Christopher's mother's home. Christopher had provided for daughter by buying diapers, a potty chair, a high chair, food, and clothing. According to mother, she lived on and off at Christopher's mother's home for the past three years, staying there two or three months at a time. Christopher was there with them off and on. Mother testified the bond between Christopher and daughter was strong, she referred to him as "dad," and frequently said she missed him.

Mother testified that Nicholas visited daughter sporadically during the previous dependency case and stopped visiting in February of 2016. Daughter never referred to Nicholas as dad, but called him by his first name.

Christopher's mother, Stella, testified that she first met daughter when she was almost two years old, and daughter, Christopher and mother lived with her at times, including the first six months of son's life. Christopher referred to daughter as his daughter; daughter called Christopher "dad" and her "Grandma Stella." Stella told people daughter was her granddaughter. Stella had hoped for placement of both daughter and son. She had requested unsupervised visits with daughter, which were denied.

The social worker testified he had spoken to Christopher twice on the telephone and visited him once at the visitation center. Christopher had asked for visits with daughter and stated he wished to be granted presumed father status and receive reunification services for her. The social worker had interacted with daughter approximately three times, and did not believe there was a significant parent-child relationship between daughter and Christopher. When asked who her father was or who

she wanted to visit, daughter stated “Chris,” but daughter never asked to see him unprompted. The social worker believed daughter had a father-daughter relationship with the foster father. The social worker had only spoken to Nicholas once and had not seen any interactions between daughter and Nicholas.

The juvenile court denied Christopher’s request for presumed father status pursuant to section 7611, subdivision (d), and his request that he be found to be a third parent under section 7612, subdivision (c). In doing so, the juvenile court stated it took into consideration the JV-505 filed by Christopher; the court file and reports in the dependency cases; the photographs and documents stipulated to by the parties; and the testimony at the hearing on the issue.

The juvenile court first found Christopher had not met his burden under section 7611, subdivision (d) to be a presumed parent, based on the following:

(1) Although noting incarceration did not sever a relationship, daughter lived with Christopher for, at most, 16 months.⁵ He was incarcerated from June 2016 through October 2016, from February 2017 through June 2017, and from July 2017 through at least September 2017, when this case was initiated. Daughter was not yet five years old at the time of the current hearing.

(2) There was no evidence Christopher made any effort to obtain custody of daughter or become her legal father prior to the current dependency case.

(3) There was testimony that mother received child support for daughter from Nicholas, but there was no open child support case listing Christopher as father. In addition, Christopher was not on the lease of any apartment or condominium that mother and Christopher lived in. While Christopher “appears” to have contributed to the family

⁵ This would consist of May 2015 until June 2016, and November 2016 to February 2017.

income, the juvenile court found those contributions “incidental,” contributing towards the household at certain times when he was living there.

(4) Christopher was not listed on any medical records for daughter, there was no evidence he ever sought medical care for daughter or that he was listed as her father on any official records for her.

(5) And while the juvenile court found daughter had “some bond” with Christopher, she had an “equal if not greater” bond with the care providers “who ... had her in their care and custody an equal amount of time and have certainly contributed to her.”

After finding Christopher had not met his burden under section 7611, subdivision (d) as a presumed father, the juvenile court noted that, even if it had found him to be such, it would not find that recognizing only two parents under section 7612, subdivision (c) would be detrimental to daughter “for the same reasons that I just stated.”

The juvenile court continued the Welfare and Institutions Code section 366.26 hearing to February 20, 2018.

DISCUSSION

Christopher contends there is insufficient evidence to support the juvenile court’s finding that he was not a presumed father of daughter, under section 7611, subdivision (d), and a third parent under section 7612, subdivision (c). Christopher also contends that Nicholas’s paternity status was not clear and that we should remand this case for the juvenile court to make a determination of Nicholas’s paternity status and, in light of that determination, for a ruling as to whether Christopher is a presumed parent under section 7611, subdivision (d) only, or is a presumed parent under section 7611, subdivision (d) and a third parent under section 7612, subdivision (c). We affirm.

General Principles

In dependency proceedings, “fathers” are divided into several different categories: presumed, alleged and biological. “The extent to which a father may participate in dependency proceedings and his rights in those proceedings are dependent on his paternal status.” (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 159.) An alleged father is not entitled to appointed counsel or reunification services, and due process requires only that he “be given notice and “an opportunity to appear and assert a position and attempt to change his paternity status.”” (*Id.* at pp. 159-160.) A presumed father is eligible to have custody of his children, appointed counsel, and reunification services. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 448-449; *In re O.S.* (2002) 102 Cal.App.4th 1402, 1410; Welf. & Inst. Code, §§ 317, 361.2, subd. (a), 361.5, subd. (a).)

Section 7611, subdivision (d) provides presumed parent status if “[t]he presumed parent receives the child into his or her home and openly holds out the child as his or her natural child.” A person requesting presumed parent status under section 7611, subdivision (d) must have a “fully developed parental relationship” with the child. (*R.M. v. T.A.* (2015) 233 Cal.App.4th 760, 776, italics omitted.) A “caretaking role and/or romantic involvement with a child’s parent” is not enough to qualify. (*Id.* at p. 777.) A presumed parent must demonstrate “a full commitment to [parental] responsibilities—emotional, financial, and otherwise.” (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801-802.) “The critical distinction is not the living situation but whether a parent-child relationship has been established. “[T]he premise behind the category of presumed [parent] is that an individual ... has demonstrated a commitment to the child and the child’s welfare.”” (*Martinez v. Vaziri* (2016) 246 Cal.App.4th 373, 384-385.) “One who claims he [or she] is entitled to presumed [parent] status has the burden of establishing, by a preponderance of the evidence, the facts supporting that entitlement.” (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1210.)

“As a general rule, “there can be only one presumed father.”” (*In re Donovan L.* (2016) 244 Cal.App.4th 1075, 1086.) However, “the Legislature enacted section 7612, subdivision (c) to allow courts to recognize that a child has more than two parents in certain limited contexts: ‘*In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child.*’ In determining detriment to the child, the court shall consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child’s physical needs and the child’s psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment to the child does not require a finding of unfitness of any of the parents or persons with a claim to parentage.’ (§ 7612, subd. (c) italics[] added by Stats. 2013, ch. 564, § 6.5.) ... [S]ection 7612, subdivision (c) allows a court to recognize three parents only in ‘rare cases’ where a child truly has more than two parents.” (*In re Donovan L., supra*, 244 Cal.App.4th at pp. 1086-1087.)

On appeal, we independently interpret statutes. However, we review factual findings regarding parentage under either section 7611 or section 7612 for substantial evidence. (*In re Donovan L., supra*, 244 Cal.App.4th at p. 1088; *R.M. v. T.V., supra*, 233 Cal.App.4th at p. 780.) “We view the evidence in the light most favorable to the ruling, giving it the benefit of every reasonable inference and resolving all conflicts in support of the judgment. [Citation.] We defer to the trial court’s credibility resolutions and do not reweigh the evidence. [Citation.] If there is substantial evidence to support the ruling, it will not be disturbed on appeal even if the record can also support a different ruling.” (*R.M. v. T.V., supra*, at p. 780.)

Nicholas M. - Presumed Father Status

As a preliminary matter, we address Christopher's argument which questions the juvenile court's designation of Nicholas as daughter's presumed father. Christopher contends the record contains no documentation of an actual presumed father finding for Nicholas, and points to the fact that Nicholas is listed as daughter's alleged father twice in the report prepared in anticipation of the Welfare and Institutions Code section 366.26 hearing.

We note the detention report prepared for the current dependency states that the department considered Nicholas to be the presumed father of daughter, and while he was not listed on daughter's birth certificate, he was elevated to presumed status in the previous dependency case and provided family reunification services, which he failed to complete. When dependency was dismissed, mother was granted sole legal and physical custody of daughter.

In any event, we question whether Christopher has the right to challenge the correctness of the department's designation of Nicholas's presumed fatherhood. At this juncture, Christopher is an alleged father only. An alleged father does not have a current interest in a child because his paternity has not yet been established. (*In re Christopher M.*, *supra*, 113 Cal.App.4th at p. 159.) An alleged father is not a party of record to the dependency proceedings. (*In re Joseph G.* (2000) 83 Cal.App.4th 712, 714-715.) "[T]he only issues on which [an alleged father] was entitled to assert a position concerned his paternal status and his intent and desires regarding the minor if his paternal status became more than just a potentiality." (*In re Christopher M.*, *supra*, at p. 160.) As such, we will not address further Nicholas's designation as presumed father of daughter.

Presumed Parent Determination

Christopher argues that the juvenile court erred when it found he did not qualify as a presumed father of daughter under section 7611, subdivision (d). We disagree.

As noted above, section 7611, subdivision (d) provides a person is presumed to be the father of a child if he “receives the child into his ... home and openly holds out the child as his ... natural child.” “In determining whether a man has ‘receiv[ed a] child into his home and openly h[eld] out the child’ as his own [citation], courts have looked to such factors as whether the man actively helped the mother in prenatal care; whether he paid pregnancy and birth expenses commensurate with his ability to do so; whether he promptly took legal action to obtain custody of the child; whether he sought to have his name placed on the birth certificate; whether and how long he cared for the child; whether there is unequivocal evidence that he had acknowledged the child; the number of people to whom he had acknowledged the child; whether he provided for the child after it no longer resided with him; whether, if the child needed public benefits, he had pursued completion of the requisite paperwork; and whether his care was merely incidental.” (*In re T.R.*, *supra*, 132 Cal.App.4th at p. 1211.) Ultimately, the question is whether the man demonstrated a ““full commitment to ... paternal responsibilities—emotional, financial, and otherwise.”” (*In re A.A.* (2003) 114 Cal.App.4th 771, 779.)

Unlike the typical presumed father applicant (see, e.g. *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 849), Christopher is not daughter’s biological father, and his relationship with her did not begin at her birth or shortly thereafter. Rather, Christopher began living with mother and daughter when she was almost two years old, and he lived with mother and daughter off and on over the course of three years, for 16 months, total, at most. For some part of that time Christopher supported the family unit by providing some supplies and some support. However, the trial court’s conclusion that Christopher’s overall conduct during those 16 months did not meet the relevant factors identified in *In re T.R.* is supported by substantial evidence. He certainly did not help with mother’s prenatal care or pay for any of her prenatal or birth expenses. He is not on the birth certificate. It appears daughter lived with mother and Christopher for a few months at a

time at Christopher's mother's home or mother's grandmother's home. Christopher did not begin to assume his parental responsibilities to daughter until after his biological son was born. And he did not protect daughter from mother's substance abuse, causing the department to intervene. Christopher did not ask for presumed father status as to daughter until the dependency case was filed.

Thus, there was scant evidence Christopher had demonstrated a ““full commitment to ... *paternal* responsibilities—emotional, financial, and otherwise.”” (*In re A.A.*, *supra*, 114 Cal.App.4th at p. 779.) Instead, it appears Christopher's care and support for daughter was incidental, at best.

In addition, there is no evidence to support Christopher's assertion that he held himself out to the world as daughter's father, other than his own testimony and that of mother and his own mother. He produced no evidence to verify his assertions, such as declarations from other family, friends, or acquaintances. Nor did anyone, other than mother and his mother, come forward to attest to seeing evidence of an emotional bond between daughter and Christopher.

As the trier of fact, the juvenile court is the “exclusive judge of the credibility of the evidence and can reject evidence as unworthy of credence,” including the testimony of a witness. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Consequently, the court was entitled to reject Christopher, mother and Christopher's mother Stella's testimony in whole or in part as lacking credibility. (*Ibid.*) On the totality of the record here, we conclude substantial evidence supports the court's conclusion that the evidence of Christopher's conduct during the last three years of daughter's life fell short of demonstrating he was fully committed to providing the emotional and financial support to daughter that would qualify him as daughter's presumed father.

Third Parent Status

Christopher also challenges the juvenile court’s denial of his request to be declared a third parent under section 7612, subdivision (c), contending the juvenile court incorrectly applied the standard of detriment. However, we need not reach the factors for determining detriment because there is substantial evidence to support the juvenile court’s initial finding that section 7612, subdivision (c) is inapplicable due to lack of an existing parent-child relationship between Christopher and daughter under section 7611, subdivision (d). (*In re Donovan L.*, *supra*, 244 Cal.App.4th at pp. 1093-1094 [“‘an appropriate action’ for application of section 7612, subdivision (c) is one in which there is an existing parent-child relationship between the child and the putative third parent, such that ‘recognizing only two parents would be detrimental to the child’”].)

DISPOSITION

The orders are affirmed.

SMITH, J.

WE CONCUR:

PEÑA, Acting P.J.

DESANTOS, J.